

13.0 Regulatory Compliance

Some activities at the Site may require regulatory compliance activities, notification, or reporting in addition to that required by RFLMA. In accordance with the CAD/ROD, the selected remedy for the COU must achieve compliance with ARARs (see Attachment A1, Table 21). Activities that are required to implement the remedy, and conducted in the COU are not subject to requirements to obtain permits otherwise required by an environmental law. However, the activities must comply with the substantive requirements that would be incorporated into a permit, generally as stated in the implementing regulations or any general or nationwide permits provided for by rule. Activities that are not required as a component of the remedy (e.g., work in the POU or work that is not related to the maintenance of a remedy component) are potentially subject to various environmental laws and implementing regulations, including any administrative requirements to obtain a permit. The work planning and authorization process in Section 9.0 includes the Project/Activity Evaluation checklist, form LMS 1005e, to guide inquiry into the regulatory compliance aspects of work.

This section presents an overview of the regulatory requirements that may be applicable to long-term maintenance and routine monitoring at the Site. The purpose of this section is to provide guidance to (1) maintain continuity of past, current, and future compliance activities associated with Site activities; (2) manage long-term maintenance activities in compliance with applicable permits, state and federal regulations, and local requirements; and (3) compliantly manage and minimize wastes derived from maintenance activities for the protection of human health and the environment. Note that the LMS WPP described in Section 9.0 includes completion of the Project/Activity Evaluation checklist, form LMS 1005e, which requires consideration of environmental laws that might apply to work either as ARARs or as applicable administrative and substantive requirements.

The information presented here is intended to be a guide to situations or activities that may require input from regulatory compliance personnel so that actions impacting the environment are conducted in accordance with the terms and conditions specified in existing agreements, RODs, and applicable DOE orders; in compliance with applicable federal, state, and local regulations, laws, and ordinances; or, in the case of ARARs, through the use of BMPs.

Federal regulations applicable to Site maintenance activities may include requirements promulgated under RCRA, CWA, the Clean Air Act, the National Environmental Policy Act (NEPA), the Pollution Prevention Act (PPA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as DOT regulations, EPA guidance documents, and DOE orders.

13.1 RCRA Program

RCRA and the Colorado Hazardous Waste Act (CHWA) regulate management of hazardous wastes. Requirements for hazardous waste management to implement the remedy are identified as ARARs. Evaluation of possible wastes generated by Site activities is required as parts of the LMS WPP, to determine whether such wastes are hazardous wastes, and to provide for the appropriate management under CHWA requirements.

RCRA Section 3016 is a biennial reporting requirement for all federal agencies that are required to provide an inventory of all facilities they currently own or operate, or have previously owned or operated at which hazardous waste is stored, treated, or disposed, or was disposed at any time. This report is due in January of even-numbered years, and submitted to EPA by DOE-Headquarters (HQ). A RCRA 3016 Report is submitted to the respective state by individual sites.

To ensure that a hazardous waste generator identification number for LM work and a permit for treatment, storage, or disposal is not required, the type and quantity of chemicals and other materials that may become solid wastes are controlled through the Rocky Flats CMP (Attachment F3). The volume of chemicals allowed under the CMP Authorized Chemicals List is strictly limited so that the amount of hazardous chemical waste generated, including waste that could be generated in a spill response, qualifies as “conditionally exempt small quantity generator” (CESQG) hazardous waste under the Colorado Hazardous Waste Regulations. Any hazardous wastes will be accumulated and managed for disposal so that the CESQG status is maintained. Section 14.0 provides additional information on waste handling and disposition.

13.2 NPDES Stormwater Program

40 CFR 122.26, Stormwater Permit for Construction Activities, and 40 CFR 122.28, General Permits, are identified as ARARs. On-site remedial actions do not require permits; however, remedies that discharge pollutants from point sources or that involve stormwater discharges must meet substantive requirements for a site-specific or general NPDES permit. Substantive requirements for an NPDES permit are identified for the PLFTS.

The ECP (Attachment E8) addresses the BMP aspects of the regulatory requirements, which among other things are designed to adequately control stormwater runoff of soils that could ultimately discharge into surface water. The purpose of these controls at Rocky Flats is to address the objective and rationale of the institutional control that prohibits soil-disturbing activities so that the RFLMA remedy performance standard for surface water is met.

Stormwater runoff from construction activities can have a significant impact on water quality by contributing sediment and other pollutants to water bodies. If work is not subject to ARARs, construction activities at Rocky Flats may require a stormwater permit in addition to the ECP. This permit is issued by EPA for another federal agency. The permit requires completion of a notice of intent, application, and fee, and a stormwater pollution prevention plan prior to commencing construction activities. Periodic documented inspections are required until the area has been adequately stabilized using permanent erosion control measures.

13.3 Clean Water Act

Section 6.0 describes the water monitoring implementation to meet the RFLMA water quality criteria, which is promulgated through the Colorado Water Quality Control Act pursuant to the Federal Water Pollution Control Act (also known as the Clean Water Act).

The wetlands protection aspects of the CWA, under 33 CFR 323.2—Definitions and 33 CFR 323.3—Discharges Requiring Permits, are identified as ARARs, and address requirements for dredging or filling of wetlands that may lead to destruction of wetlands. The U.S. Army Corps of Engineers reissued all existing nationwide permits (NWP), general

conditions, and definitions in effect on the date of the CAD/ROD and added 6 new NWP, 2 new conditions, and 13 new definitions, effective March 19, 2007. The implementation of the remedy is not impacted because all activities subject to this ARAR are conducted in accordance with the March 19, 2007, substantive requirements. Evaluation of possible discharges from construction activities that could impact surface water quality and wetlands require evaluation of whether an NWP applies to the activity, or whether a specific permit may be required.

Note that a wetland bank has been established to mitigate impacts of the removal of some wetlands areas during cleanup and closure activities (see Attachments E2 and E7).

13.4 Clean Air Act

Fugitive dust emissions during construction activities at the Site require best management controls. If a non routine activity is initiated that may act as an emissions source, the activity will be reviewed by environmental compliance personnel to determine whether the activity is exempt from notification requirements.

13.5 SARA Title III

EPCRA, also known as the Superfund Amendments and Reauthorization Act (SARA), Title III, was signed into law in October 1986. It was established to inform the public of hazardous chemicals that may affect their communities and assist local emergency planners to prepare for possible emergencies involving hazardous chemicals.

40 CFR 355 requires that notification be made to state and local emergency planning organizations if a listed hazardous substance that exceeds a reportable quantity is released to the environment. Additionally, emergency officials are to be notified for planning purposes if any listed chemicals will be used or stored at the facility that may exceed a threshold planning quantity. The volume of chemicals allowed under the CMP Authorized Chemicals List is strictly limited so that the amount of chemicals that constitute a reportable quantity or otherwise trigger EPCRA reporting are known in advance of authorized uses. As of 2007, Site activities and chemical use no longer trigger EPCRA reporting.

40 CFR 370 requires that MSDSs be maintained for chemicals present at a facility, and that personnel be trained on the hazards of using these chemicals. A list of chemicals maintained at the facility must be made available to local and state emergency response officials. This list should include chemicals that are used in maintenance activities at the Site. For Rocky Flats, the Site-specific CMP addresses these requirements and will be followed.

13.6 Natural Resource and Wildlife Protection Laws

A number of natural resource and wildlife protection laws are identified as ARARs. Section 2.0 provides a discussion of the ecological attributes of the Site that are subject to certain of these protection laws. Several components of the RFSOG provide more details on implementation of requirements related to these laws, in addition to the Erosion Control and Revegetation,

Ecological Monitoring and Ecology Data Management subsections in Sections 6.0 and 8.0, as follows:

- Endangered Species Act—Requirements are implemented in accordance with Attachments E3 and E4.
- Migratory Bird Treaty Act—Requirements are implemented in accordance with Appendix K.
- Colorado Wildlife Statutes, Including Nongame, Endangered, or Threatened Species Conservation Act and the State Statutes Regarding Illegal Possession—Note that in 2006, the Colorado Wildlife Commission modified the legal methods of take for game species, including the black-tailed prairie dogs, where necessary to control damage on privately owned land. Inspections for adverse biological conditions is required under RFLMA and is addressed in Sections 5.0 and 15.0.
- Federal Noxious Weed Act and Colorado Noxious Weed Act—Requirements are implemented in accordance with Attachments E5 and E6.

13.7 P2 Program

The annual report on Waste Generation and Pollution Prevention (P2) Progress and the Environmentally Preferred Purchases Report are required under DOE Order 450.1. These annual reports are submitted electronically and are typically due to DOE-HQ during the first week of December.

The PPA, established in 1990, requires EPA to develop and implement a strategy that promotes source reduction and other practices that reduce or eliminate the creation of pollutants. The Act amended EPCRA reporting requirements, and required facilities to provide information on pollution prevention and recycling for each toxic chemical. EPA published its P2 Strategy to integrate pollution prevention objectives into all aspects of its existing programs.

13.8 NEPA Planning

An annual NEPA Planning Summary is due at the start of the fiscal year for submittal to DOE-HQ, as requested by DOE-LM. Rocky Flats Site input will be included in the annual DOE-LM report. NEPA requires federal agencies to assess the impacts that major federal actions may have on the quality of human health and the environment. DOE procedures for implementing NEPA are contained in 10 CFR 1021, 40 CFR 1500-1508, and DOE Order 451.1B. The purpose of DOE Order 451.1B is to establish requirements and responsibilities, and foster teamwork within DOE for cost-effective implementation of NEPA. Rocky Flats will follow DOE policy to implement CERCLA requirements when conducting remedy activities in a manner that incorporates NEPA values; separate NEPA review is not required.

In some cases, a large project at the Site may require a NEPA review to establish that the activity is eligible for a categorical exclusion from NEPA evaluation. Environmental compliance personnel should be notified prior to beginning large, nonroutine projects that may change or disturb the Site environment.

13.9 Well Construction and Water Use Permits

The Colorado State Engineer's Office added content to their website in early 2006 (State of Colorado 2006) that recognized that wells installed at RCRA and/or CERCLA sites do not need permits. Unless the Site's status or state requirements change, new monitoring wells will not require permitting. However, wells will be installed in accordance with methods defined by the Colorado State Engineer's Office. Well abandonment will also be conducted in accordance with state-defined methods.

Well Management is a DOE-LM program to track well permits for installation and ensure that all DOE-owned wells are properly abandoned and documented. All new well installation logs, well numbers, and notices of intent should be copied and submitted to Environmental Compliance to be entered into the LMS well tracking database.

13.10 DOT and IATA Regulations

DOT regulations regarding transporting, packaging, placarding, and manifesting hazardous and radioactive materials and wastes are found in 49 CFR 171 through 178. These regulations pertain to the transportation in commerce (e.g., on U.S. highways) of process waste, contaminated media, and investigation-derived waste (IDW) that are contaminated with RCRA-regulated levels of constituents upon disposal. These regulations also pertain to samples and off-specification products meeting the definition of hazardous materials. This evaluation has been performed using process knowledge for the environmental samples normally collected under the Site's current sampling program, and must be reviewed annually with the results documented in the Rocky Flats Project File. However, samples or wastes from new areas, or when conditions of samples or locations indicate conditions may have changed, must be evaluated by a trained shipper prior to transport off Site.

IATA regulations are based on International Civil Aviation Organization Technical Instructions (Doc 9284-AN/905) pertaining to the transportation of dangerous goods by air. The packaging and shipping procedures recommended by the normal carriers (e.g., UPS, FedEx, and DHL) are used for transportation with the carriers. All DOE air shipments from the Site must be evaluated for compliance with IATA by a shipper trained in IATA regulations.

A trained shipper must evaluate all DOE shipments involving these materials from the Rocky Flat Site at least annually to ensure compliance with hazardous materials transportation regulations.

13.11 EPA Guidance to Management of IDW

EPA developed guidance in January 1992 (EPA 1992) to ensure that management of IDW generated by CERCLA field investigations is protective of human health and the environment and complies with applicable regulatory requirements.

EPA's guidance describes the allowable disposal of IDW within an area of contamination as follows (1992):

Storing IDW in a container... within the (area of contamination) and then returning it to its source... **is** allowable without meeting the specified (Land Disposal Restriction) treatment standards.... Therefore, returning IDW that has been stored in containers... within the (area of contamination) to its source does not constitute land disposal, as long as containers are not managed in such a manner as to constitute a RCRA storage unit as defined in 40 CFR 260.10. In addition, sampling and direct replacement of waste within an (area of contamination) do **not** constitute land disposal.

This management scenario is a viable option for environmental monitoring work at the Site, as long as best professional judgment and available information indicate that dispersal of solid IDW such as drill cuttings and excess soil samples in or around wells will not increase the threat to human health or the environment.